

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	Don R. James Jr. et al.	Examiner:	Junchun Wu
Serial No.:	10/812,220	Art Unit:	2191
Filed:	March 29, 2004	Docket No.:	200313892-1
Title:	SYSTEMS AND METHODS FOR CONTROLLING PROGRAM INSTALLATION ON A COMPUTING DEVICE		

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Mail Stop Appeal Brief – Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed on August 18, 2009, appealing the final rejection of claims 1-7, 15-17, 19-22, and 24-27 of the above-identified application as set forth in the Final Office Action mailed June 25, 2009.

The U.S. Patent and Trademark Office is hereby authorized to charge Deposit Account No. 08-2025 in the amount of \$540.00 for filing a Brief in Support of an Appeal as set forth under 37 C.F.R. §41.20(b)(2). At any time during the pendency of this application, please charge any required fees or credit any overpayment to Deposit Account No. 08-2025.

Appellants respectfully request consideration and reversal of the Examiner's rejection of pending claims 1-7, 15-17, 19-22, and 24-27.

Appeal Brief to the Board of Patent Appeals and Interferences

Appellant: Don R. James Jr. et al.

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REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, LP having a principal place of business at 11445 Compaq Center Drive West, Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants that will have a bearing on the Board's decision in the present Appeal.

STATUS OF CLAIMS

In a Final Office Action mailed June 25, 2009, claims 1-7, 15-17, 19-22, and 24-27 were finally rejected. Claims 1-7, 15-17, 19-22, and 24-27 are pending in the application. Claims 8-14, 18, 23 were cancelled. Claims 1-7, 15-17, 19-22, and 24-27 are the subject of the present Appeal.

STATUS OF AMENDMENTS

No amendments have been entered subsequent to the Final Office Action mailed June 25, 2009.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The Summary is set forth as exemplary embodiments corresponding to the language of independent claims 1, 15, and 20. Discussions about elements of claims 1, 15, and 20 can be found at least at the cited locations in the specification and drawings.

One embodiment of the present invention, as claimed in independent claim 1, is a method for controlling program installation on a computing device (102). The method comprising an installer program (216) that executes on the computing device determining the type of an original operating system (212) currently installed on the computing device (*see Specification*, Figures 2 and 5); the installer program that executes on the computing device

determining the type of a new operating system that a user is attempting to install on the computing device to replace the original operating system from information stored within a software package that comprises the new program operating system (*see Specification*, Figure 5); the installer program that executes on the computing device comparing on the computing device the types of the original and new operating systems to determine whether installation of the new operating system is authorized (*see Specification*, Figures 5); and the installer program that executes on the computing device preventing installation of the new operating system if the types are not the same. *See Specification*, at page 3, line 16 through page 6, line 24; page 9, line 20 through page 13, line 8; and Figures 1, 2, and 5.

Another embodiment of the present invention, as claimed in independent claim 15 is a computer-readable medium that stores an installer program (216). The installer program comprising logic configured to execute on a user computer (102) and determine on the user computer the type of an existing operating system (212) installed on the user computer (*see Specification*, Figures 2 and 5); logic configured to execute on the user computer and determine on the user computer the type of a new operating system that has been downloaded to the user computer (*see Specification*, Figure 5); logic configured to execute on the user computer and compare on the user computer the types of the new and existing operating systems (*see Specification*, Figure 5); logic configured to execute on the user computer and to determine that installation of the new operating system is not authorized when the types are not the same (*see Specification*, Figure 5); and logic configured to execute on the user computer and prevent installation of the new operating system when it is determined that installation is not authorized. *See Specification*, at page 3, line 16 through page 6, line 24; page 9, line 20 through page 13, line 8; and Figures 1, 2, and 5.

Yet another embodiment of the present invention, as claimed in independent claim 20 is a computing device (102). The computing device comprising a processor (200) (*see Specification*, Figure 2); and memory (202) comprising a previously-installed operating system (212), a management interface (218) that comprises information that describes the type and version of the previously-installed operating system, and an installer program (216) configured to (i) determine the type of the previously-installed operating system from the information of the management interface, (ii) determine the type of a new operating system

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with which a user is attempting to replace the previously-installed operating system from information stored within a software package that contains the new operating system, (iii) compare the types of the new and previously-installed operating systems and determine that installation of the new operating system is not authorized if the types of the new and previously-installed operating systems are not the same, and (iv) prevent installation of the new operating system if it is determined that installation is not authorized. *See Specification*, at page 3, line 16 through page 6, line 24; page 9, line 20 through page 13, line 8; and Figures 1, 2, and 5.

GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

- I. Whether claims 1, 3-5, 20, 21, 24, 25, and 27 are patentable under 35 U.S.C. § 103(a) over Mullen et al., U.S. Patent Application Publication No. 2004/0243997 (“Mullen”) in view of Deshpande et al., U.S. Patent Application Publication No. 2003/0218628 (“Deshpande”); whether claim 2 is patentable under 35 U.S.C. § 103(a) over Mullen in view of Deshpande, and further in view of Herrick, U.S. Patent Application Publication No. 2004/0181790 (“Herrick”); whether claim 6 is patentable under 35 U.S.C. § 103(a) over Mullen in view of Deshpande, and further in view of Delgado et al., U.S. Patent Application Publication No. 2005/0066324 (“Delgado”); whether claim 7 is patentable under 35 U.S.C. § 103(a) over Mullen in view of Deshpande, and further in view of Kadam et al., U.S. Patent Application Publication No. 2003/0079126 (“Kadam”); and whether claim 22 is patentable under 35 U.S.C. § 103(a) over Mullen in view of Deshpande, and further in view of Delgado and Ahuja, U.S. Patent No. 6,122,732 (“Ahuja”).
- II. Whether claims 15 and 19 are patentable under 35 U.S.C. § 103(a) over Herrick in view of Deshpande; whether claims 16 and 26 are patentable under 35 U.S.C. § 103(a) over Herrick in view of Deshpande, and further in view of Mullen; and whether claim 17 is patentable under 35 U.S.C. § 103(a) over Herrick in view of Deshpande, and further in view of Kadam.

ARGUMENT

I. The Applicable Law

With regard to a 35 U.S.C. § 103 obviousness rejection: “Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case.” M.P.E.P. 2141 (emphasis in the original). The Examiner bears the burden under 35 U.S.C. § 103 in establishing a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074 [5 USPQ2d 1596, 1598] (Fed. Cir. 1988).

One criteria that must be satisfied to establish a *prima facie* case of obviousness is the reference or combined references must teach or suggest all of the claim limitations. *In re Royka*, 490 F.2d 981 [180 USPQ 580] (C.C.P.A. 1974).

However, “[a] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1731 [82 USPQ2d 1385, 1389] (2007). In making an obviousness determination over a combination of prior art references, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *Id.* at 1738 [1396].

To facilitate review of the determination of whether there was an apparent reason to combine known elements in the fashion claimed by the patent at issue, the “analysis should be made explicit.” *Id.* at 1738 [1396]. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 [78 USPQ2d 1329] (Fed. Cir. 2006) (cited with approval in *KSR*, 127 S. Ct. at 1738 [82 USPQ2d at 1396]).

The test for obviousness under § 103 must take into consideration the invention as a whole; that is, one must consider the particular problem solved by the combination of elements that define the invention. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143

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[227 USPQ 543, 551] (Fed. Cir. 1985). Furthermore, claims must be interpreted in light of the specification, claim language, other claims, and prosecution history. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568 [1 USPQ2d 1593, 1597] (Fed. Cir. 1987), *cert. denied*, 481 U.S. 1052 (1987). At the same time, a prior patent cited as a § 103 reference must be considered in its entirety, “i.e. as a *whole*, including portions that lead away from the invention.” *Id.* That is, the Examiner must recognize and consider not only the similarities, but also the critical differences between the claimed invention and the prior art as one of the factual inquiries pertinent to any obviousness inquiry under 35 U.S.C. § 103. *In re Bond*, 910 F.2d 831, 834 [15 USPQ2d 1566, 1568] (Fed. Cir. 1990) (emphasis added).

Furthermore, the Examiner must avoid hindsight. *Id.* “A fact finder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.” *KSR*, 127 S. Ct. at 1739 [82 USPQ2d at 1397] (citing to *Graham v. John Deere*, 383 U.S. 1 [148 USPQ 459] (1966) in warning against a temptation to read into the prior art the teachings of the invention at issue and instructing courts to guard against slipping into the use of hindsight).

“[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.” *KSR*, 127 S. Ct. at 1737 [82 USPQ2d at 1395] (citing to *United States v. Adams*, 383 U.S. 39, 51-52 [148 USPQ 479] (1966)).

In conclusion, an Appellant is entitled to a patent grant if a *prima facie* case of obviousness is not established. The Federal Circuit has endorsed this view in stating: “If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the Appellant is entitled to grant of the patent.” *In re Oetiker*, 977 F.2d 1443, 1446 [24 USPQ2d 1443, 1448] (Fed. Cir. 1992).

- II. Rejection of claims 1, 3-5, 20, 21, 24, 25, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Mullen et al., U.S. Patent Application Publication No. 2004/0243997 (“Mullen”) in view of Deshpande et al., U.S. Patent Application Publication No. 2003/0218628 (“Deshpande”); rejection of claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Mullen in view of Deshpande, and further in view of Herrick, U.S. Patent Application Publication No. 2004/0181790 (“Herrick”); rejection of claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Mullen in view of Deshpande, and further in view of Delgado et al., U.S.

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Patent Application Publication No. 2005/0066324 (“Delgado”); rejection of claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Mullen in view of Deshpande, and further in view of Kadam et al., U.S. Patent Application Publication No. 2003/0079126 (“Kadam”); and rejection of claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Mullen in view of Deshpande, and further in view of Delgado and Ahuja, U.S. Patent No. 6,122,732 (“Ahuja”)

Mullen, Deshpande, Herrick, Delgado, Kadam, and Ahuja fail to render claims 1-7, 20-22, 24, 25, and 27 *prima facie* obvious.

Appellants submit that Mullen and Deshpande, either alone, or in combination, fail to teach or suggest the limitations recited by independent claim 1 including “an installer program that executes on the computing device determining the type of an original operating system currently installed on the computing device; the installer program that executes on the computing device determining the type of a new operating system that a user is attempting to install on the computing device to replace the original operating system from information stored within a software package that comprises the new program operating system; the installer program that executes on the computing device comparing on the computing device the types of the original and new operating systems to determine whether installation of the new operating system is authorized; and the installer program that executes on the computing device preventing installation of the new operating system if the types are not the same.”

Mullen discloses a computer including a first operating system installed in a first file directory. A second file directory is created and an operating system image is copied to the second file directory to provide a second operating system installed on the computer. Configuration setting information is processed to determine configuration settings for the first operating system in the first file directory. The determined configuration settings is copied from the first file directory to configuration settings in the second file directory, wherein the second operating system uses the configuration settings copied to the second file directory. (Para. [0006]).

Deshpande discloses a mechanism for installing a patch on an electronic device utilizing a graphical user interface. A software wizard programmatically pre-verifies the patch dependencies (pre-installed software) required by the software patch and checks the

target device to ensure that the target device possesses the requisite software. The installation of the software patch is performed once all the required software is present on an appropriate target device. (Para. [0004]).

The Examiner submits that *determining the type of an original operating system currently installed on the computing device* as recited by claim 1 is disclosed by Mullen at paragraphs [0028] and [0023]. (Final Office Action mailed June 25, 2009, page 2). Mullen discloses that the installation program 52 processes (at block 156) the application/OS configuration list 56 to determine the operating system configuration settings 6a, 6b . . . 6c to copy from the preexisting operating system configuration settings 106 to the installed operating system configuration settings 126. (Para. [0028]). The configuration settings disclosed by Mullen do not include the *type* of the preexisting operating system. Rather, the configuration settings are merely copied from the preexisting operating system for use with the installed operating system in Mullen.

Mullen also discloses that Fig. 3 illustrates information maintained in the application/OS configuration list 56. The application/OS configuration list 56 may include entries 80, where each entry identifies an operating system or application program. (Para. [0023]). Application/OS configuration list 56 is part of system installation package 50 for computer 2. (Para. [0021]; and Fig. 2). Application/OS configuration list 56 is not currently installed on computer 2. Therefore, application/OS configuration list 56 cannot be used to determine the type of an original operating system *currently installed on the computing device*.

The Examiner submits that *determining the type of a new operating system that a user is attempting to install* as recited by claim 1 is disclosed by Mullen at paragraphs [0009] and [0023]. (Final Office Action mailed June 25, 2009, page 3). The application configuration settings disclosed by Mullen do not include the *type* of an *operating system*. The application configuration settings are not even related to an *operating system*; rather they are configuration settings for an application program that executes with the second operating system. (Para. [0009]).

Mullen also discloses that Fig. 3 illustrates information maintained in the application/OS configuration list 56. The application/OS configuration list 56 may include

entries 80, where each entry identifies an operating system or application program. (Para. [0023]). Application/OS configuration list 56 is part of system installation package 50 for computer 2. (Para. [0021]; and Fig. 2). Mullen does not disclose that an installer program that executes on computer 2 determines the type of a new operating system that a user is attempting to install on computer 2.

The Examiner submits that *the installer program that executes on the computing device comparing on the computing device the types of the original and new operating systems to determine whether installation of the new operating system is authorized* as recited by claim 1 is disclosed by Deshpande at paragraph [0028]. (Final Office Action mailed June 25, 2009, page 4). Deshpande discloses that the patch module 10 queries the target device 20 (step 102) and retrieves attributes necessary for the installation process (step 104). A determination is made as to whether the device is validated by comparing the retrieved attributes required for the installation of the software patch 15, 16, and 17 (step 106). If the comparison of the attributes indicates that the target device 20 meets the required validation parameters (step 106), the patch module proceeds to a dependency check for the selected software patch (step 108). (Para. [0028], emphasis added). Clearly, Deshpande discloses that patch module 10 and not target device 20 performs the comparison rather than the comparison being performed by *the installer program that executes on the computing device* (i.e., on the target device 20 of Deshpande) as recited by claim 1.

In the response to arguments in the Final Office Action mailed June 25, 2009, the Examiner cites paragraphs [0017] and [0018] of Deshpande as disclosing “the installer program that executes on the computing device comparing...” (Final Office Action mailed June 25, 2009, page 23). Deshpande discloses that the network management tool 9 includes a patch module 10 used to install software patches on selected target devices. (Para. [0017], emphasis added). Deshpande also discloses that the patch module 10 determines any patch dependencies required by the patch 15, 16, or 17. If a dependency is required, the patch module 10 queries the target device 20 to retrieve a software list 34 of the software currently installed on the target device. The software list 34 is checked to determine whether the target device already includes the software required by the selected patch 15, 16, and 17. If the target device 20 has been validated and the software patch dependencies have been satisfied,

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the selected patch is installed on the target device. (Para. [0018], emphasis added). Once again, Deshpande clearly discloses that patch module 10, which is installed on network management tool 9 and not on target device 20, performs the check rather than the check being performed by *the installer program that executes on the computing device* (i.e., on the target device 20 of Deshpande) as recited by claim 1.

The Examiner submits that *the installer program that executes on the computing device preventing installation of the new operating system if the types are not the same* as recited by claim 1 is disclosed by Deshpande at paragraph [0028]. (Final Office Action mailed June 25, 2009, page 4). Deshpande discloses that if the comparison (performed by patch module 10) of the attributes reveals that the attributes are not acceptable (step 106) the device is not validated and an appropriate error message detailing the cause of the validation failure is displayed to the user 2 (step 110). (Para. [0028]). User 2 accesses a client device 4 which is interfaced with a server 8. The server 8 includes a network management tool 9. The network management tool 9 includes patch module 10. (Para. [0017]). Therefore, Deshpande discloses that patch module 10 and not target device 20 prevents the installation rather than the installation being prevented by *the installer program that executes on the computing device* (i.e., on the target device 20 of Deshpande) as recited by claim 1.

In view of the above, Appellants submit that the above rejection of independent claim 1 under 35 U.S.C. § 103(a) should be withdrawn. Dependent claims 2-7 and 25 further define patentably distinct independent claim 1. Accordingly, Appellants believe that these dependent claims are also allowable over the cited references. Allowance of claims 1-7 and 25 is respectfully requested.

For similar reasons as discussed above with reference to independent claim 1, Appellants submit that Mullen and Deshpande, either alone, or in combination, also fail to teach or suggest the limitations recited by independent claim 20 including “**memory comprising ... an installer program configured to (i) determine the type of the previously-installed operating system from the information of the management interface, (ii) determine the type of a new operating system with which a user is attempting to replace the previously-installed operating system from information stored within a software package that contains the new operating system, (iii) compare the**

types of the new and previously-installed operating systems and determine that installation of the new operating system is not authorized if the types of the new and previously-installed operating systems are not the same, and (iv) prevent installation of the new operating system if it is determined that installation is not authorized.”

In view of the above, Appellants submit that the above rejection of independent claim 20 under 35 U.S.C. § 103(a) should be withdrawn. Dependent claims 21, 22, 24, and 27 further define patentably distinct independent claim 20. Accordingly, Appellants believe that these dependent claims are also allowable over the cited references. Allowance of claims 20-22, 24, and 27 is respectfully requested.

III. Rejection of claims 15 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Herrick in view of Deshpande; rejection of claims 16 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Herrick in view of Deshpande, and further in view of Mullen; and rejection of claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Herrick in view of Deshpande, and further in view of Kadam

Herrick, Deshpande, Mullen, and Kadam fail to render claims 15-17, 19, and 26 *prima facie* obvious.

Appellants submit that Herrick and Deshpande, either alone, or in combination, fail to teach or suggest the limitations recited by independent claim 15 including “logic configured to execute on a user computer and determine on the user computer the type of an existing operating system installed on the user computer; logic configured to execute on the user computer and determine on the user computer the type of a new operating system that has been downloaded to the user computer; logic configured to execute on the user computer and compare on the user computer the types of the new and existing operating systems; logic configured to execute on the user computer and to determine that installation of the new operating system is not authorized when the types are not the same; and logic configured to execute on the user computer and prevent installation of the new operating system when it is determined that installation is not authorized.”

Herrick discloses that the target computer may have an executable program thereon for automatically determining the currency of software installed on the target computer,

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comparing the currency of the installed software to a desired configuration list stored on the administrative computer, and obtaining installation software from a library server including necessary updates, upgrades and patches for installation on the target computer. (Para. [0009]).

Deshpande discloses a mechanism for installing a patch on an electronic device utilizing a graphical user interface. A software wizard programmatically pre-verifies the patch dependencies (pre-installed software) required by the software patch and checks the target device to ensure that the target device possesses the requisite software. The installation of the software patch is performed once all the required software is present on an appropriate target device. (Para. [0004]).

The Examiner submits that *logic configured to execute on a user computer and determine on the user computer the type of an existing operating system installed on the user computer* as recited by claim 15 is disclosed by Herrick at paragraph [0009]. (Final Office Action mailed June 25, 2009, page 11). The currency of the software installed as disclosed by Herrick does not disclose the *type* of an *operating system*. The currency merely provides the version or configuration, and not the *type*, of the software installed. (Para. [0026]).

In addition, the Examiner submits that paragraph [0023] of Herrick discloses this claim limitation. (Final Office Action mailed June 25, 2009). The Examiner cited text of paragraph [0023], however, appears to come from Mullen, which the Examiner has not cited in the rejection of claim 15. Therefore, this reference to paragraph [0023] of Herrick is improper and irrelevant to the rejection of claim 15.

The Examiner submits that *logic configured to execute on the user computer and determine on the user computer the type of a new operating system that has been downloaded to the user computer* as recited by claim 15 is disclosed by Herrick at paragraph [0056]. (Final Office Action mailed June 25, 2009, page 11). Herrick merely discloses comparing versions of software packages using a build list. (Para. [0056]). Herrick does not disclose comparing *types* of software packages. Further, the build list disclosed by Herrick is not a *new operating system that has been downloaded to the user computer*. The build list contains information defining the desired version 304 for a given software package 302. (Para.

[0036]; and Fig. 3). In Herrick, the software to be installed is not downloaded until after the comparison using the build list is completed. (Para. [0057]).

The Examiner submits that *logic configured to execute on the user computer and compare on the user computer the types of the new and existing operating systems* as recited by claim 15 is disclosed by Herrick at paragraph [0009]. (Final Office Action mailed June 25, 2009, page 12). The currency of the software installed as disclosed by Herrick does not disclose the *type* of an *operating system*. The currency merely provides the version or configuration, and not the *type*, of the software installed. (Para. [0026]).

The Examiner submits that *logic configured to execute to on the user computer and to determine that installation of the new operating system is not authorized when the types are not the same; and logic configured to execute on the user computer and prevent installation of the new operating system when it is determined that installation is not authorized* as recited by claim 15 is disclosed by Deshpande at paragraph [0028]. (Final Office Action mailed June 25, 2009, page 12). Deshpande discloses that the patch module 10 queries the target device 20 (step 102) and retrieves attributes necessary for the installation process (step 104). A determination is made as to whether the device is validated by comparing the retrieved attributes required for the installation of the software patch 15, 16, and 17 (step 106). If the comparison of the attributes indicates that the target device 20 meets the required validation parameters (step 106), the patch module proceeds to a dependency check for the selected software patch (step 108). (Para. [0028], emphasis added). Clearly, Deshpande discloses that patch module 10 and not target device 20 determines the installation is not authorized rather than the determination being performed by *logic configured to execute on the user computer* (i.e., on target device 20 of Deshpande) as recited by claim 15.

Further, Deshpande discloses that if the comparison (performed by patch module 10) of the attributes reveals that the attributes are not acceptable (step 106) the device is not validated and an appropriate error message detailing the cause of the validation failure is displayed to the user 2 (step 110). (Para. [0028]). User 2 accesses a client device 4 which is interfaced with a server 8. The server 8 includes a network management tool 9. The network management tool 9 includes patch module 10. (Para. [0017]). Therefore, Deshpande discloses that patch module 10 and not target device 20 prevents the installation rather than

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the installation being prevented by *logic configured to execute on the user computer* (i.e., on target device 20 of Deshpande) as recited by claim 15.

In view of the above, Appellants submit that the above rejection of independent claim 15 under 35 U.S.C. § 103(a) should be withdrawn. Dependent claims 16, 17, 19, and 26 further define patentably distinct independent claim 15. Accordingly, Appellants believe that these dependent claims are also allowable over the cited references. Allowance of claims 15-17, 19, and 26 is respectfully requested.

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CONCLUSION

For the above reasons, Appellants respectfully submit that the cited references neither anticipate nor render obvious claims of the pending Application. The pending claims distinguish over the cited references, and therefore, Appellants respectfully submit that the rejections must be withdrawn, and respectfully request the Examiner be reversed and claims 1-7, 15-17, 19-22, and 24-27 be allowed.

Any inquiry regarding this Appeal Brief should be directed to either Reed J. Hablinski at Telephone No. (281) 514-7828, Facsimile No. (970) 812-0443 or Mark A. Peterson at Telephone No. (612) 573-0120, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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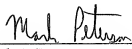
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CLAIMS APPENDIX

1. (Previously Presented) A method for controlling program installation on a computing device, the method comprising:

an installer program that executes on the computing device determining the type of an original operating system currently installed on the computing device;

the installer program that executes on the computing device determining the type of a new operating system that a user is attempting to install on the computing device to replace the original operating system from information stored within a software package that comprises the new program operating system;

the installer program that executes on the computing device comparing on the computing device the types of the original and new operating systems to determine whether installation of the new operating system is authorized; and

the installer program that executes on the computing device preventing installation of the new operating system if the types are not the same.

2. (Previously Presented) The method of claim 1, further comprising the installer program determining the versions of the original operating system and the new operating system.

3. (Previously Presented) The method of claim 1, wherein determining the type of an original operating system comprises determining the type of an original operating system that is embedded in solid-state memory of the computing device.

4. (Previously Presented) The method of claim 1, wherein determining the type of an original operating system comprises determining the type of an operating system that is embedded in re-writable, solid-state memory of a terminal computer.

5. (Previously Presented) The method of claim 1, wherein determining the type of an original operating system comprises reading information stored in a management interface of

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the computing device.

6. (Previously Presented) The method of claim 1, wherein determining the type of an original operating system comprises reading information from an original equipment manufacturer (OEM) string of a desktop management interface (DMI) of the computing device.

7. (Previously Presented) The method of claim 1, wherein determining the type of a new operating system comprises reading information from a header associated with the new operating system.

8-14. (Cancelled)

15. (Previously Presented) A computer-readable medium that stores an installer program, the installer program comprising:

logic configured to execute on a user computer and determine on the user computer the type of an existing operating system installed on the user computer;

logic configured to execute on the user computer and determine on the user computer the type of a new operating system that has been downloaded to the user computer;

logic configured to execute on the user computer and compare on the user computer the types of the new and existing operating systems;

logic configured to execute on the user computer and to determine that installation of the new operating system is not authorized when the types are not the same; and

logic configured to execute on the user computer and prevent installation of the new operating system when it is determined that installation is not authorized.

16. (Previously Presented) The system of claim 15, wherein the logic configured to determine the type of an existing operating system comprises logic configured to read configuration information stored in a management interface of the computing device.

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17. (Previously Presented) The system of claim 15, wherein the logic configured to determine the type of a new operating system comprises logic configured to read configuration information from a header associated with the new operating system.

18. (Cancelled)

19. (Original) The system of claim 15, further comprising logic configured to install the new operating system and replace the existing operating system when installation is authorized.

20. (Previously Presented) A computing device, comprising:

a processor; and

memory comprising a previously-installed operating system, a management interface that comprises information that describes the type and version of the previously-installed operating system, and an installer program configured to (i) determine the type of the previously-installed operating system from the information of the management interface, (ii) determine the type of a new operating system with which a user is attempting to replace the previously-installed operating system from information stored within a software package that contains the new operating system, (iii) compare the types of the new and previously-installed operating systems and determine that installation of the new operating system is not authorized if the types of the new and previously-installed operating systems are not the same, and (iv) prevent installation of the new operating system if it is determined that installation is not authorized.

21. (Previously Presented) The device of claim 20, wherein the memory comprises re-writable, solid-state memory and wherein the previously-installed operating system is embedded within the solid-state memory.

22. (Previously Presented) The device of claim 20, wherein the management interface comprises a desktop management interface (DMI) and the information is stored in an original

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equipment manufacturer (OEM) string contained within the DMI.

23. (Cancelled)

24. (Original) The device of claim 20, wherein the computing device is a terminal computer that does not comprise a hard drive.

25. (Previously presented) The method of claim 1, further comprising:
the computing device receiving the software package from a software source via a network, wherein the software package contains the installer program;
the computing device identifying the installer program contained in the software package; and
the computing device installing the installer program on the computing device prior to determining whether installation of the new program is authorized.

26. (Previously presented) The computer-readable medium of claim 15, wherein the installer program comprises part of a software package that is configured for download to the user computer, the software package further including the new operating system such that the installer program will be run on the user computer when the new operating system is downloaded to the user computer and a user attempts to install the new operating system on the user computer.

27. (Previously presented) The computing device of claim 20, wherein the installer program comprises part of the software package such that the installer program will be run on the user computer when the new operating system is downloaded to the user computer from a software source and a user attempts to install the new operating system on the computing device.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.